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CHARLES BORSTEL
COMMISSIONER, DIVISION OF
PROFESSIONAL LICENSURE

Board Meeting Minutes – February 11, 2018 9:00 a.m.
One Ashburton Place, 21st Floor, Conference Room 3, Boston

Board Members Present:

- Walter White (WW)
- Jane Hardin (JH)
- Jeffrey Dougan (JD)
- Dawn Guarriello (DG)
- Patricia Mendez, (PM)

Also in Attendance:

- William Joyce, Compliance Officer (WJ)
- John High, Assistant Legal Counsel and Director of External Affairs, DLP (JH)

Members not present:

- Andrew Bedar (AB)

WW – Called roll. DG, PM, JH, WW, JD present.

WW - The Chair opened the meeting.

1. Item Not Reasonably Anticipated by the Chair 48 Hours Prior to Board Meeting

Executive Session, Discussion of Personnel Matters - Closed Session pursuant to M.G.L.
c. 30A, § 21

JH moved to go into Executive Session, DG seconded.

WW called roll.

Ayes – DG, PM, JH, JD, WW.

2. Incoming: Cohen Residences, 112 Centre Street, Brookline, V19-010
Exhibit – Variance Application and associated documents
Mr. Joyce presented the Variance Application and associated documents.

Renovation of an existing 12 story building. 3.3.2 triggered. Petitioner seeks 2 variances: lack of handrail extension at the bottom of the main stairs and lack of minimum headroom in the garage. For the former petitioner argues cost of compliance is excessive with no real benefit as the stairs are rarely used, for the latter petitioner argues compliance is technologically infeasible.

DG moved to grant relief to 27.4 as proposed, JD seconded.

Passed unanimously

JD moved to grant relief to 23.4.7 as proposed, DG 2nded

Passed unanimously.

3. Incoming: Ahold, 1385 Hancock Street, Quincy, V19-011

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

\$17.5m renovation of an existing \$30m building. 3.3.2 triggered. Petitioner seeks relief for lack of wall clearance and extensions on the inner rail of a stair tower. Petitioner argues cost of compliance is excessive for minimal benefit for persons with disabilities.

JD motions to Grant relief to 27.4 on the inner handrail on the condition that the outer handrail fully complies, DG seconds.

Passed unanimously

4. Incoming: 500 Ocean Avenue, 500 Ocean Avenue, Revere, V19-012

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

New construction of a 305 unit mixed use building. Petitioner seeks relief for sink depths in Group 1 and Group 2A units as they will be allowed by right under the proposed next edition of 521 CMR.

DG moved to grant relief to 43.3.2, and 45.4.5 on the condition that the purchase and sale agreements and or lease documents have language that states that the option is available upon request, for persons with disabilities, that the deeper sink shall be swapped out to a six and one half inch (6 ½”) deep sink at no cost to the condominium owner/lease holder for the life of the building, JD seconds.

Passed unanimously.

5. Incoming: MetroWest YMCA, Framingham Branch, 380 Old Connecticut Path, V19-013

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

\$5.5m addition to an existing \$2.5m building. 3.3.2 triggered. Petitioner seeks relief for lower children’s sinks in several bathrooms and classrooms. Review of the submission, however, does not make it clear that relief is required here, as in all affected bathrooms an adult sized

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compliance accessible sink is provided and 521 CMR 30 only requires 1 compliance sink per toilet room. In the classrooms it would depend on whether children's sinks constitute a different "type" of fixture under 521 CMR 12.4. Additionally, petitioner's submission includes documentation from MDEEC indicating that the AAB regularly grants relief for side approach at children's sinks, which is incorrect. On 2/7 we received a letter of support from Mark Dempsey of the Framingham Building Department.

JH moved to grant relief to 12.4, DG seconds.

Passed unanimously

DG moved to order the Board's staff to contact MDEEC, JH seconds

Passed unanimously

6. Incoming: The Druid, 1357 Cambridge Street, Cambridge, V19-014
Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents. \$188,100 renovation of an existing \$433,700 building. 3.3.2 triggered. Petitioner seeks relief for lack of access at the front entrance which is 2 steps above grade. However, it's not clear from their submission whether a sloped landing at the front is possible and the ramp they describe at the back is not included in the plans.

JD moved to continue for more information including but not limited to plans of the proposed rear ramp, pictures of the proposed route, and information on proposed lighting on the route, DG seconded.

Passed unanimously.

7. Discussion: Worcester County Courthouse Apts., 2 Main Street, Worcester, V18-390

Exhibit – 1/25 Letter from Bernard Trevor Rabidou regarding additional information on handrails.

Mr. Joyce presented the case. The Board previously continued one of the Petitioner's requests for additional information on the installation of handrail extensions. Petitioner's submission contains responses to the questions raised by the Board, as well as cost estimates for installation of the various handrail extensions.

JD moved to grant relief to 27.4 & 27.2 as proposed, DG seconds.

Passes unanimously.

8. Executive Session, Discussion of Pending Litigation - Closed
Session pursuant to M.G.L. c. 30A, § 21

DG moved to enter Executive Session, JD seconds

WW called roll.

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Ayes – DG, PM, JH, JD, WW.

Raymond Glazier (RG) Arrives

9. Item Not Reasonably Anticipated by the Chair 48 Hours Prior to Board Meeting

Discussion: Presentation by representatives of several disability advocacy organizations.

Carol Steinberg, Former Member, Architectural Access Board (CS)

Bill Allan, Former Executive Director, Disability Policy Consortium (BA)

Rick Glassman, Director of Advocacy, Disability Law Center (GI)

Bill Henning, Executive Director, Boston Center for Independent Living (BH)

WW - This is an item that was not reasonably foreseen by the chair at the time of the posting of the agenda. Over the weekend we received a request from Carol Steinberg, a former member of the Board to come and speak to the Board.

CS – We're here on behalf of the disability community to pay tribute to Tom, and ensure his work continues.
Disability has suffered a tremendous loss. Tom's efforts made a major impact at ensuring buildings are accessible to people with disabilities.
We want a seat at the table, and ask that a search committee be formed where members of our community are significantly represented.
The Board must be an indispensable part of the hiring process as well.
Plain reading of the statute provides that the Executive Director shall be hired directly by the Board.
Tom and his predecessor were both hired by the Board.

RG - Echo CS's sentiments.

- What involvement should the community and the Board have in the hiring process.
- Beyond the plain language of the statute, there is available legislative history on the reading the statute, based on a 1986 legislative report.
- Report was a searing criticism of the Board at the time.
- Legislature assembled a study committee, whose report includes the Board's current legislation.
- Report states that disability community was not being heard, and specified that the Board needed its own executive director, and specifies that the Board in specific should employ staff.
- I'm happy to provide copies, and hope that you'll adopt a process that reflects the statute and the specific legislative intent.

BA - I'm here to lend my support.

BH - I go way back, I was one of the advocates that supported that legislation in 1987.

- I just wanted to paraphrase comments from Michael Muehe who wanted to pay tribute to Tom.
- Tom was a visionary on how this building code should be used to advance access for the disability community, but also understood it was necessary to be impartial beyond

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reproach

- I think it's incumbent on the Board to work with the state and the community to find a person with a disability to fill the position if possible.

WW Left the Room.

10.Incoming: Lenox Sophia, 87A Street, Boston, V19-015

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

\$89,650 renovation of an existing pizza restaurant. Jurisdiction is 3.3.1a. Petitioner seeks two variances. The first is for the use of a portable ramp at the main entrance to the restaurant, which is the converted former apartment entrance, due to the solid cast concrete floor alteration of which would require jacking up the building. The second is to the size of the toilet room, however the proposed minor expansion of the toilet room, which would still leave it too small to be usable, appears to be being done solely for access. Expanding it beyond what is proposed would require relocating an existing wetwall for the residential units above, or a structural column. On 2/4 we received a letter of opposition from BCIL.

~~JD moved to grant on conditions that specifications for the ramp are provided, and that training materials on the ramp are provided, and information is included on the website.~~

JD withdrew his motion.

PM moved to continue for a test drawing of a potential ramp, JD seconded.

Passed unanimously.

JD moved to grant relief to 30.7.1 on the condition that information regarding the size of the toilet room is included on the restaurant's website, PM seconded.

Passed unanimously.

WW returned.

11.Incoming: Quincy Market Building, South Market Street, Boston, V19-016

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

As part of the installation of a new tenant space, petitioner seeks relief to use a vertical wheelchair lift to provide access from the grade level to a public toilet room at the cellar level. Application includes a letter of support from the Boston Landmark Commission. On 2/6 we were copied on a letter from BCIL to the Petitioner requesting additional information.

JD moved to grant relief to 28.12.1 on the condition that the lift fully comply with 28.12.2, RG seconded.

Passed unanimously.

12.Incoming: Miraval Spa Building, 55 Lee Road, Lenox, V19-018

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Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

Renovation of an existing building. Petitioner seeks relief for the dimensions of a transfer wall to a hot tub. Proposes to use dimensions defined by the current edition of ADADS which we have proposed to adopt in the next edition.

JD moved to grant as proposed, JH seconds.

Passes Unanimously

13.Incoming: The Residences at Burlington, 20 Corporate Drive, Burlington, V19-020

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

New construction of a mixed use building. Petitioner seeks relief for sink depths in Group 1 and Group 2A units as they will be allowed by right under the proposed next edition of 521 CMR.

JD moved to grant with the usual conditions. DG seconded.

Passed unanimously.

14.Discussion: New Bedford Public Safety, 890 Brock Avenue, New Bedford

Exhibit – Draft Affidavit & Color Coded Floorplan

Mr. Joyce presented the draft affidavit to the Board for their approval.

JD moved to accept the affidavit, JH seconded.

Passed unanimously.

15.Hearing: Chestnut Farms Apartments, 100 Chestnut Farm Way, Raynham C18-019, V18-383

William Joyce, Compliance Officer (WJ)

The chair introduced the Board.

All parties were sworn in.

Exhibit – Hearing Packet AAB 1-118

- WJ
- Complaint originally filed by Bill Shine of IA, citing a dumpster that's up several steps.
 - After notice was sent, we received communication from the owner's agent, Dominic Marinelli of Untied Spinal indicating they would submit a variance.
 - After some time passed and no variance was submitted, a hearing was scheduled, after which the Board received an application which was originally heard.
 - It was continued at that time as materials referenced in the application weren't included.

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- We did received the required information on 12/31/18.
- This was originally supposed to be heard on 2/4/19 but the Board ran out of time.
- Applicant is proposing a “trash valet” policy where the management will pick up trash upon request by a resident requiring an accommodation as well as alternate trash drop off locations.

WW - What’s his timeframe for implementation?

WJ - It’s already been implemented.

JD - Any concerns on the language?

JH - Only that no specific timeframe for trash pickup has been provided.

~~JH moved to grant the request on the condition that language is included specifying timely pickup of the trash.~~

RG - We need rule for the complainant.

WW - Has the complaint been ruled on previously?

WJ - This is the first hearing.

JH withdrew her motion.

JD moved to find in favor of the complainant, DG seconded.

Passed unanimously.

JH moved to grant the request on the condition that language is included specifying a reasonable time, within 4 hours.

WW - What if someone calls in the middle of the night?

WJ - I imagine this would be on a regular schedule.

PM - With a compactor that’s less likely. It should be less than 24 hours.

JH amended her motion to specify that trash pickup should be completed within 24 hours. DG seconded the amended motion.

Passed unanimously.

16.Incoming: Elizabeth’s Daycare, 6 Schouler Court, Arlington, V19-017

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

Renovation of an existing building to allow the use of a daycare on the ground floor. Petitioner seeks relief for no internal access between the two halves of the ground floor which are split by a 3’ change in level. Test drawings show a ramp is infeasible, but application references cost of a lift at \$16-25k which does not seem like an unreasonable cost.

JD motion to deny, JH seconded.

Passed unanimously.

17.Incoming: Philip Anthony House, 14 S. 6th Street, New Bedford, V19-019

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Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

\$65k renovation to create a music studio in a \$117,500 existing building. 3.3.2 triggered.

Petitioner seeks no access to the studio, and argues both that the cost would be excessive and there is insufficient space to support an accessible route. No accommodation plan provided.

JD moved to continue for an accommodation policy, JH seconded.

Passed unanimously.

18. Discussion: Belmont Hill School, 350 Prospect Street, Belmont, V18-377

Exhibit – Additional drawings and information provided by Mr. Scott Aquilina via email

Mr. Joyce presented the new submission received on 1/22. Petitioner's submission provides responses to the questions raised by the Board during its 1/7 review of this case. The north entrance is the existing monumental entrance up 3 steps to a portico and an additional step from the portico to the entrance. Petitioner states they will install handrails, but seeks relief to maintain entrance in its current configuration. For the tiered seating, Petitioner's proposal involves raising existing inaccessible seating rows and will have no effect on the proposed accessible seating locations.

JD moved to grant relief to 25.1 & 3.3.4 as proposed on the condition that handrails complying with 27.4 be provided on the stairs, DG seconded.

Passed unanimously.

JD - Was enough space provided at the wheelchair seating?

WJ - Nothing jumped out as me as non-complaint.

JD & DG colloquy on whether sufficient space is provided to not impede egress at the wheelchair seating.

RG - Did this trigger full compliance?

WJ - Yes.

RG - Corner stairs have unequal treads, did we previously grant it?

WJ - You previously grant that, as well as relief on the balcony level.

JD moved to grant relief to 14.4.2 & 27.4.1 as proposed on the condition that the proposed wheelchair seating spaces fully comply, DG seconded.

Passed unanimously.

19. Item Not Reasonably Anticipated by the Chair 48 Hours Prior to Board Meeting

WW - This was not reasonably anticipated within 48 hours, as I drafted a letter over the weekend, getting some feedback from individual board members but engaging in no group communication.

- Reads the proposed letter into the record.

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- I just want to open it up to discussion to see if anyone has any thoughts.
 - JH - Letter is well stated, I fully support it.
 - JD - This morning's presentation from the community needs to be weaved into it. It might already be here enough, but I think the legislative study would be helpful to enclose with the letter.
 - WW - Sure. That can be further information, but I wanted to get something now.
- Colloquy between JD and WW on MOD's position on the letter.
- DG - Commissioner stated changes to the Board's process, and I believe the diversity and expertise of the Board is valuable to upholding 521 CMR, that same diverse expertise is valuable for determining the new Executive Director.\
- We all have different views and expertise, different experiences, and that what makes the Board so valuable. Important factor in evaluating potential new Director. Fully support letter. We're some of the best candidates to evaluate people so that we can uphold our duties as Board members.
- RG - I think you're preaching to the choir.
- JD - As Mr. Borstel mentioned, we're one of the better performing Boards and our involvement is important to ensuring that the Director is someone we can work with consistently, and someone who understands the regulations and their importance. These regulations are sometimes the last line of defense for people, to guarantee they'll have equal and fair participation in the community. That's something that must be valued by the Executive Director.
- I support the letter.
- PM - Our perspective is valuable, because we have a better understanding of the day to day functioning of the meeting and what is needed to make sure it works. Outside this room, I'm not sure people understand the volume, intensity, and importance of this work.
- I think the letter explains the intention of the legislation.
 - I think the Disability Community's presentation also included important information.
 - I think the two letters have two separate perspectives to share, so they should be separate.

JH moved to have the letter signed on behalf of the Board, DG seconded.

Passed unanimously.

All Board Members present sign the letter.

20.Incoming: Cambridge Orthodontics, 1753 Massachusetts Avenue, Cambridge, V18-021

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

Renovation of an existing dental office. Spending not specified, but in response to Q11 states jurisdiction is 3.3.1b. Petitioner seeks full relief as front entrance is on a porch 3'6" above grade with an additional 4" step into the building. Petitioner additionally alleges floor plate is too small to support a compliant toilet room, but no floor plan is provided. No apparent consideration of a vertical lift to provide access at the entrance.

JD moved to continue to request the petitioner provide floor-plans of both floors, a test drawing of an accessible bathroom, and a test drawing of an accessible entrance. RG seconded.

Passed unanimously.

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21.Incoming: Real Estate Office, 672 Main Street, Reading, V19-022

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

\$198,000 conversion of an existing Chinese restaurant into a real estate office. 3.3.1b triggered.

Petitioner seeks relief to provide a sloped down landing w/ 12.5% slope and automatic door opener. Petitioner argues making the entrance accessible is technologically infeasible as under the current landing is a structural beam supporting the floor, and accessing it would require going through the space of the tenant below them.

Colloquy on at what point slope becomes a tipping hazard. Consensus is that 15% is where tipping hazard becomes dangerous.

PM moved to grant as proposed on the condition that a button to request assistance is provided in addition to the automatic door opener. JH seconded.

Passed unanimously.

22. Incoming: Integrated Science Center 100 William T. Morrissey Blvd.,
Boston, V19-023

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

New construction of a pedestrian bridge in 2015 that DCAMM has discovered to be non-compliant. Petitioner seeks relief for a portion of the walkway with slopes between 5.1-6.7%. Petitioner argues that correcting the slope would require total reconstruction of the bridge of which a majority of the slope is compliant.

Last weekend we received a letter of support from BCIL on the condition that handrails are installed.

JH moved to grant relief on the condition that handrails & signage are provided on the bridge. DG seconded

Passed unanimously.

23.Hearing: SRTA Elm Street, 134 Elm Street, New Bedford (C18-012)

Arthur Frank, General Council SRTA (AF)

Eric Rousoiu, Administrator, SRTA (ER)

William Joyce, Compliance Officer (WJ)

The chair introduced the Board.

All parties were sworn in.

Exhibit 1 – Hearing Packet AAB 1-13

WJ - Provides brief summary of the administrative history of case to this point.

- First notice was sent, Petitioner responded indicating they would be modernizing the

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- elevator.
- Stipulated Order was issued. Letter demanding proof of compliance was sent after no response.
 - After continued non-response, staff contacted the Elevator Board who indicated the Elevator had been closed and a civil fine had been issued. As a result a hearing was scheduled.
 - Last week I spoke with AF who indicated that the elevator was back in service, and I advised him to appear with a copy of the certificate as that should serve to resolve this matter.

ER - Reads a copy of the Fine Abatement Letter.

AF - SRTA was a victim of getting pushed to the back of the line by the elevator company because the new hotel supported by the Mayor of New Bedford was going to get installed first.

- We thank you for your indulgence on this matter.

EXHIBIT 2 – A copy of the Elevator Certificate

EXHIBIT 3 – A copy of the fine abatement letter.

JD moved to find in favor of the complainant. DG seconded.

Passed unanimously.

JD moved to accept the certificate and the letter as proof of compliance and close the case, JH seconded.

Passed unanimously.

24. Incoming: Four Seasons Hotel, 200 Boylston Street, Boston, V19-024

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

Renovation of existing guest rooms. Jurisdiction is 3.3.1b. Petitioner seeks relief for the location of controls in a Group 2B shower. However, the shower design is unusual and it's not clear it complies.

JD moved to continue to request the Petitioner provide drawings showing the seat on the short wall. RG seconded.

Passed unanimously.

JD moved to find that on the plan provided the proposed shower design does not comply with 44.6.2. PM seconded.

Passed unanimously.

25. Incoming: The Spice Lofts, 141 West Second Street, Boston, V19-025

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Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

\$300k renovation of an existing building to add a roof deck. Jurisdiction is 3.3.1b. Petitioner seeks relief for no access to the common use portion of the roof deck. Petitioner states that adding an additional level to the existing elevator would cost \$200k and that there is no place where a vertical wheelchair lift would fit. No information regarding the use of an inclined lift is provided, though from the plans it seems likely that there would be insufficient space on the stairs to board. On 2/7 we received a letter of opposition from BCIL.

PM moved to continue to request a test drawing showing an inclined lift. JH seconded.

Passed unanimously.

26.Incoming: Harmony Natural Learning Center, 67-69 Newburyport Turnpike, Newbury, V19-026

Exhibit – Variance Application and associated documents

Mr. Joyce presented the Variance Application and associated documents.

Existing preschool is proposing to expand to the 2nd floor of its current building, including the construction of a new edition. Petitioner seeks temporary relief until 9/2021 for the use of the existing 2nd floor space for the current school year. Petitioner states that they do not expect to be able to begin the proposed addition (which includes the demolition of the current 2nd floor) until after the end of the 2019-2020 school year, but expect it to be complete by September 2020.

JH moved to grant on the condition that an accommodation policy is provided for the Board's review and status report every 6 months with the first report due July 2019. JD seconded.

Passed unanimously.

27.Discussion: Water's Edge, 364-394 Ocean Avenue, Revere, C18-002, C18-003, C18-004, C18-005

Exhibit – 2/1 Status Report by Atty. Nosal of Brown Rudnick

Mr. Joyce presented the Status Report which indicates that it expects to begin inspections on the modernized elevators on 2/11. In addition there were only 4 service calls during January.

PM moved to accept the status report. DG seconded.

Passed unanimously.

28.Discussion: Boat Club 65 Cambridge Street, Winchester, V11-255

Exhibit – Amended Application for Variance and attached documents

Mr. Joyce presented the amended application. At its 4/27/17 meeting the Board had ordered the petitioner that if it was determined at a later date that the stair could only provide 1 handrail without impinging on the egress width then Petitioner would need to amend their variance. On 1/22, the Board received the amended request. Petitioner states that the stair in question is directly adjacent to the LULA which serves both floors.

JD moved to grant as proposed, JH seconded.

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Passed unanimously.

29.Discussion: Squirrelwood Apartments, Multiple Streets, Cambridge, V18-305

Exhibit – 1/30 Letter from Miranda Stuckey containing additional narrative and drawings
At its 10/15/18 meeting, the Board continued 3 requests for relief for additional information from the Petitioner. On 1/30 the Board received a submission from Miranda Stuckey via email with information on the ramps, stairs, and distribution of 2A units. Petitioner states that reconfiguration of the current landing layout would require extensive demolition and regarding, that the handrail extensions would impede egress, and that all new 2A units are being located within the accessible buildings, as a majority of buildings on the site do not have accessible entrances.

JD moved to grant all 3 requests as proposed. DG seconded.

Passed unanimously.

30.Discussion: Hair Salon, 78 Jerome Street, Berkley, V18-353

Exhibit – Submission from Petitioner consisting of a copy of the ZBA's decision on this property and a proposed accommodation policy

The Board had previously continued this case to request additional information from the Petitioner. Mr. Joyce presented the new submission to the Board.

Colloquy between JD, PM, and WJ about past accommodation policies, and what conditions would be considered excessively burdensome for the Petitioners.

JH: Berkley is a fairly rural area. Upholding the ZBA's conditions seems appropriate.

JH moved to grant relief for this use only and on the same conditions as the ZBA decision. JD seconded.

Passed w/ RG abstaining.

31.Discussion: Laundromat, 158 Union Street, Framingham, V18-378

Exhibit – Letter from Mark Dempsey with information on the ramp and sidewalk.

The Board had previously continued the request for relief at the main entrance, to seek information from the Petitioner on the status of the rear entrance and whether any future work on the sidewalk was planned. Mr. Joyce presented the new submission received by the Board on 2/5 from Mr. Dempsey of the Framingham Building Department. Mr. Dempsey states no accessible parking is provided, that the sidewalk is scheduled to be reconstructed in approximately 3 to 4 years, and provide a photograph of the rear ramp.

DG moved to grant relief on the condition of directional signage at the front entrance and the installation of an automatic door opener at the rear entrance. JD seconded.

Passed unanimously.

32.Discussion: Church of Scientology, 214-226 Lincoln Street, Boston, V18-

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Exhibit – Amended Variance Application and Associated Documents

Mr. Joyce presented the Amended Application. The Board had previously continued the request to seek additional information from the petitioner on the accessible route and details on the ramp. On 1/17 the Petitioner submitted additional information, and on 2/6 we received additional correspondence from BCIL renewing their opposition to the variance request.

DG motion to grant as proposed on the condition that directional signage is provided at the inaccessible entrance. PM seconded.

Passed unanimously.

33. Discussion: Adams House Complex, Multiple Streets, Cambridge, V19-001
Exhibit – Variance Application and associated documents

The Board had previously voted to place this case in their packets. On 1/23 the Board received a letter of support from the Cambridge Commission on Disability. Petitioner is seeking 6 variances.

RG: Could they resolve the nosing variance with carpet?

#1

RG left for the day.

JD moved to grant relief to 25.1 on the condition of site signage and information on the website. JH seconded.

Passed unanimously.

#2

JD moved to grant relief to all except for A.1. JH seconded.

Passed unanimously.

JD moved to continue with respect for A.1 to request a study on the use of a center handrail. JH seconded.

Passed unanimously.

#3

JD moved to continue for a study on the effect on the nosings of the installation of carpet or other filler. DG seconded.

Passed unanimously.

#4

JD moved to grant as proposed. DG seconded.

Passed unanimously.

#5

JD moved to grant as proposed on the condition that the lift complies with 28.12.2. DG seconded.

Passed unanimously.

#6

JD moved to grant on the condition that signage is provided. JH seconded.

Passed unanimously.

34. Discussion: Story Chapel, 580 Mt. Auburn Street, Cambridge, V19-002
Exhibit – Variance Application and associated documents

The Board had previously voted to place this case in their packets. After the packets were sent we were copied on correspondence from BCIL with questions for the architects as well as the architect's response. Petitioner is seeking 5 variances.

JD moved to grant on the condition that compliant handrails be provided, and signage to accessible entrance be provided. JH seconded.

Passed unanimously.

JD: I don't like the video idea as a means of equal access, but I don't really know what to do otherwise. I was looking for the Board's feelings on this as an intermediate step.

Colloquy between JD and JH on whether video is intended to be temporary or permanent.

WJ: Application specifies this is temporary.

Further colloquy on the nature of the live streaming between JD, WJ, PM, and JH.

JD moved to continue the variance to request additional information on the proposed video. JH seconded.

Passed unanimously.

#2

JD moved to grant as proposed. DG seconded.

Passed unanimously.

#3

JD moved to grant a 3 year variance for item 1 & 2 on the condition of 6-month status updates on budgeting, planning, and progress with the first report to be received January 1, 2020. DG seconded.

Passed unanimously.

JD moved to grant relief on item 3 on the condition that the Petitioner provide an affidavit

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swearing under the pains and penalties of perjury that the alter is limited to the use of staff only. JH seconded.

Passed unanimously.

35. Discussion: Elm Street Reconstruction, Amesbury, V19-006

Exhibit – Variance Application and associated documents

At its previous meeting, the Board voted this case be placed into their packets. Petitioner is seeking relief from 21.3 at 13 locations as part of the reconstruction of Elm St.

Colloquy on curb cut length and slope conditions between JD, JH, & WJ.

JD moved to grant for Ramp 2, 4, & 6 as proposed. JH seconded.

Passed unanimously.

Colloquy on Ramp 7 & 8 between JD, JH, & WJ.

JD moved to grant as proposed for Ramp 7 & 8. JH seconded.

Passed unanimously.

JD moved to grant relief to Ramps 31, 32, 33, 34, 36 & Driveway 47. PM seconded.

Passed unanimously.

JD moved to grant relief to Ramp 38 as proposed. DG seconded.

Passed unanimously.

JD moved to grant relief to Ramps 63, 65, & 67 as proposed. JH seconded.

Passed unanimously.

36. Discussion: Upton Housing Authority, 4 Hartford Avenue, N. Upton, C18-020

Exhibit – Full copy of the case file.

JHigh - Provides procedural history of the case. The issue is whether you want to grant the complainant an adjudicatory hearing.

JH - They object to it not being called a walkway.
- Comments on conflict between complainant and another resident shown in the correspondence provided by complainant.

PM - The complainant wants a hearing?

JHigh - Yes. I don't see new information or specific grounds to require a hearing.

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Administrative Discussion and Incoming Case Review occurs throughout the course of the day.

WW - So this was a drainage path that people used it as a walkway, what caused them to close it off?

JHigh - They did in response to the complaint.

DG - Commented on drainage system's unusual design.

Colloquy between JH, WW, and JHigh on usage of the area in question.

PM - Consideration of the costs and benefits of a hearing.

WW - Hearing seems likely to be highly confrontational.
- Where's the complaint?

JHigh - AAB 62.

PM - Finding as to path/drainage question was relatively straightforward.

WW - Not sure on what remedy the Board can offer here.

JH - Drainage path design has appearance similar to walkway. Hearing seems like it would offer complainant a chance to be heard.

DG - Striping never included.

WW - Board should request referenced grading plan.

DG - Does not appear to have intended to be a walkway, but design looks like a walkway causing confusion.

Colloquy between WW, DG, and JHigh on paths of travel on the site and the design of the disputed area.

DG - It's a bad design, should have created a culvert.

WW - Hearing could resolve these questions.

PM moved to schedule a hearing. JH seconded.

Passed w/ JD abstaining.

37. Hearing: Apartment Building, 141 Sea Street, Quincy (C17-060)
Exhibit – Hearing Packet AAB 1-69

William Joyce, Compliance Officer (WJ)

Greg Jenner, Owner (GJ)

Jeffery Turk, Esq. Turk and Quijano LLP (JT)

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Administrative Discussion and Incoming Case Review occurs throughout the course of the day.

The chair introduced the Board.

All parties were sworn in

EXHIBIT 1 AAB 1-69

WJ - In Board' previous decision (AAB 68) required that the owner provide the Board with certain documents.

- As of 1/10 we have received the service contract and records, but we have not received a modernization contract.
- Question before the Board is why these weren't submitted in a timely fashion and what is the status of the modernization.

JT - Failure to deliver the documents was a failure by my client.

- My client apologizes, no disrespect was intended.
- As far as the issue in the case, on 1/24 we provided a letter (AAB 2)
- Service contract is a gold service contract the highest level available.
- We have a member of staff who checks the elevator every morning.
- Since September there has only been 1 day when the elevator was out, due to a lightning strike and it's was repaired.
- Maintenance person checks every single button every day.
- We have a dedicated person from Thyssenkrupp who lives 10 minutes from the building.
- A copy of the report showing all service calls is in the packet.
- As far as the modernization, we provided two proposals we've now received to do the work.
- We've been in the process of getting the proposals and putting together the financings.
- As of last week, we have received a commitment from ownership to do one building per year.
- Issue with the proposal is that modernization will be out for 3 months, and we've been looking into the temporary use a chairlift during that time which will require a variance from the AAB.
- We expect to start within the next few months.
- We hope to have a signed contract within 90 days.
- To sum up, elevator is fully operational and we have a commitment to have one building done this year and one next year.

WW - So how many floors in the building?

GJ - 5 Floors above grade.

WW - When you say a stairlift would this be serving all floors.

JT - The plan was to offer residents who might view this as an inconvenience to offer to transfer residents to a lower floor.

GJ - It's multiple chair lifts. Those are the things we're trying to flesh out now.

WW - You might run into problems about restricting the width of egress stairs.

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Administrative Discussion and Incoming Case Review occurs throughout the course of the day.

JT - That's why we went back to the elevator company, because their proposal from the didn't include that.

- We currently don't have any residents in wheelchairs so it may be that people are fine fine, but that's why we planned to offer to transfer people down to the first or second floor.

WW - It could be that a lot of people, such as elderly people who can't climb the stairs...

JT - That's the challenge. It's the challenge of modernizing an active elevator.

WW - And what's involved in the modernization?

GJ - Controller replacement, machine replacement, governor replacement, roller guide upgrade, code upgrades, machine room and hoistway wiring, car and hoistway fixtures, car ceiling and wall upgrades. Pretty comprehensive.

WW - Same car just everything...

GJ - Right, from the motor to the hoistway. Over the years the motor has really been the biggest problem.

WW - How old is it?

GJ - I think we're going on 50 years old.

WJ - I know when the gentleman from Thyssen was here last time he identified that the control system was the source of the complainants issue and that it was too old to have the sort of diagnostic systems that would be needed to run down the issue which is why they recommended modernization.

JT - They replaced those already.

GJ - The problem with Mr. Markovitz's original complaint was that when he pressed the button on the 5th floor the elevator wouldn't come. So long story short we replaced all the buttons, which seems to have done the trick.

DG - During the modernization I know you mentioned stair lifts, do you have an offer in to assist people with groceries or other heavy objects? Is there even staff to do that? I broke my ankle last summer so there can be instances that come up that aren't permanent that can affect the ability to use the stairs. Is there the possibility to temporarily housing someone in the other building which will still have a working elevator during the modernization? I guess we'd be looking for the plan for that.

JT - I think when that happens we have to come before you on a variance at which point we'd have to give you the plan for how we're going to do all those things. Having been involved with that a few times recently, we know we'll give you a plan. We're currently waiting to hear back from the elevator company on a few options.

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Administrative Discussion and Incoming Case Review occurs throughout the course of the day.

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DG - Do the stairs have compliant railings?

PM - You were talking about that service, and you mentioned that someone was 10 minutes away, but formally what's the response time specified in the contract?

JT - Typically it's same day.

PM - So what's the next step to evaluate the viability of the chairlift?

WW - Well they'll need to come into us when they propose that.

JH - Do we have a copy of the info you provided us on the modernization?

JT - No, but I'm happy to provide you with a copy.
- It's a letter from Thyssenkrupp, actually it's in the packet.

WW - What's the length of time these submissions were overdue?

WJ - 131 Days.

WW - What was going on in that time?

JT - Making sure the elevator was working, getting proposals from the elevator companies, and I think they were supposed to report back to you and they didn't report back to you. We'd be happy to report back to you in 90 days.

WW - That's 5 months, did we have specific dates in the decision?

WJ - Yes, there are 2 pieces. First, we required they submit by 9/21/18 a copy of the service contract, service records, and modernization contract.

- 2nd was a scheduled for the modernization which was required to be updated on a quarterly basis which was due on 12/1/18
- Schedule was 60 days late, contract and records were 131 days late, we still haven't received the modernization contract.

WW - What I'm getting at is was this stuff done and just not reported, or did it take you this long to get these items ready?

JT - They had the service contract in place, they just failed to provide it.

WW - And when was the service contract effective?

GJ - Two years ago I believe.

JT - The one's that provided was 5/2017.

WW - When were the buttons fixed?

GJ - September.

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Administrative Discussion and Incoming Case Review occurs throughout the course of the day.

WJ - So the buttons were repaired prior to the previous hearing because the hearing was scheduled because the complainant called and said the buttons had been replaced but they still weren't working. So I called the Quincy building department because they're just down the road, and they sent someone to go press the button and see if it worked and it didn't. So I scheduled the hearing because I was hearing one thing from the complainant and a building official and another thing from the owner. At the hearing the gentleman from Thyssen, stated that in their view the problem was not with the button itself, but with the controller of the elevator, and the controller was sufficiently old that it lacked modern diagnostic systems so they weren't certain that they would be able to locate the problem within the controller which is why the modernization includes the full replacement of the controller. It's a 50 year old controller that predates modern computing.

WW - So when was the work done that fixed that and got it working again?

JT - I don't recall.

WJ - It was prior to August 27th which was the date of the prior hearing.

WW - When did the complainant say the buttons weren't working?

WJ - June 28th.

WW - That was ahead of hearing?

WJ - Yes, that's why the hearing was scheduled. Description of the circumstances of a member of the building department testing the button.

JT - I have the log from the maintenance guy, showing he checked the buttons and elevator daily and they're all fine.

WW - And the complainant, has he contacted us again?

WJ - Yes, he's contacted us several times. After the last hearing I advised him to submit instances of outages in writing. I have two written communications where he reports the elevator was out of service, 8/30 and 9/8. The complainant tends to use the elevator in the later evenings than early in the morning. The complainant has called several times on related issues.

WW - I'm just trying to get to whether you did act in a timely fashion and failed to notify us, or whether you didn't act in a timely fashion.

JT - Well the service contract's been in place the whole time. No problems have been reported since September. These proposals have been in place since before we received the notice. Once we received the notice we immediately responded.

WW - Do any of the members have feelings on the fine.

JD - My only thought is that we order the contract be in place by September. How much longer is that going to be?

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JT - We have the proposals, we're just waiting on the info about the chairlift. We hope to have their response in no more than 30 days, and have a signed contract in 45 to 60 days.

WJ - In light of the staff time it takes to handle all the preparations and follow up, I think a reasonable one-time fine is in order. For the smooth functioning of the Board we rely on people to comply voluntarily, and so this calls for some sort of response from the Board. It took nearly a full quarter to produce these documents and a small one-time fine might help ensure future production of documents is timely.

JT - While it's not the Board's job, if an email had been sent out reminding my client of this requirement, we would have responded immediately, and we produced everything. They're already spending a significant amount of money to modernize this elevator.

Colloquy between WW, JD, DG, & PM on whether to issue a fine and wording of proposed motion.

JD moved to waive the fine on the condition that the Petitioner must submit a copy of the executed modernization contract and a full modernization schedule no later than 4/15. PM seconds.

Passes unanimously.

38. Discussion: Minutes from the February 4, 2019 meeting

Exhibit: February 4, 2019 Draft Minutes

JD moved to accept the minutes. DG seconded.

Passed unanimously.

Exhibits

- Cohen Residences, 112 Centre Street, Brookline, V19-010
 - Variance Application and associated documents
- Ahold, 1385 Hancock Street, Quincy, V19-011
 - Variance Application and associated documents
- 500 Ocean Avenue, 500 Ocean Avenue, Revere, V19-012
 - Variance Application and associated documents
- MetroWest YMCA, Framingham Branch, 380 Old Connecticut Path, V19-013
 - Variance Application and associated documents
- The Druid, 1357 Cambridge Street, Cambridge, V19-014
 - Variance Application and associated documents
- Lenox Sophia, 87A Street, Boston, V19-015
 - Variance Application and associated documents
- Quincy Market Building, South Market Street, Boston, V19-016
 - Variance Application and associated documents
- Elizabeth's Daycare, 6 Schouler Court, Arlington, V19-017
 - Variance Application and associated documents
- Miraval Spa Building, 55 Lee Road, Lenox, V19-018
 - Variance Application and associated documents
- Philip Anthony House, 14 S. 6th Street, New Bedford, V19-019
 - Variance Application and associated documents
- The Residences at Burlington, 20 Corporate Drive, Burlington, V19-020
 - Variance Application and associated documents
- Cambridge Orthodontics, 1753 Massachusetts Avenue, Cambridge, V18-021
 - Variance Application and associated documents
- Real Estate Office, 672 Main Street, Reading, V19-022
 - Variance Application and associated documents
- Integrated Science Center 100 William T. Morrissey Blvd., Boston, V19-023
 - Variance Application and associated documents
- Four Seasons Hotel, 200 Boylston Street, Boston, V19-024
 - Variance Application and associated documents
- The Spice Lofts, 141 West Second Street, Boston, V19-025
 - Variance Application and associated documents
- Harmony Natural Learning Center, 67-69 Newburyport Turnpike, Newbury, V19-026
 - Variance Application and associated documents
- New Bedford Public Safety, 890 Brock Avenue, New Bedford
 - Draft Affidavit & Color Coded Floorplan
- Upton Housing Authority, 4 Hartford Avenue, N. Upton, C18-020
 - Full copy of the case file.
- Boat Club 65 Cambridge Street, Winchester, V11-255
 - Amended Application for Variance and attached documents
- Water's Edge, 364-394 Ocean Avenue, Revere, C18-002, C18-003, C18-004, C18-005
 - 2/1 Status Report by Atty. Nosal of Brown Rudnick
- Squirrelwood Apartments, Multiple Streets, Cambridge, V18-305
 - 1/30 Letter from Miranda Stuckey containing additional narrative and drawings
- Hair Salon, 78 Jerome Street, Berkley, V18-353
 - Submission from Petitioner consisting of a copy of the ZBA's decision on this property and a proposed accommodation policy
- Belmont Hill School, 350 Prospect Street, Belmont, V18-377
 - Additional drawings and information provided by Mr. Scott Aquilina via email
- Laundromat, 158 Union Street, Framingham, V18-378
 - Letter from Mark Dempsey with information on the ramp and sidewalk.
- Worcester County Courthouse Apts., 2 Main Street, Worcester, V18-390
 - 1/25 Letter from Bernard Trevor Rabidou regarding additional information on handrails.
- Church of Scientology, 214-226 Lincoln Street, Boston, V18-393
 - Amended Variance Application and Associated Documents
- Adams House Complex, Multiple Streets, Cambridge, V19-001

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- Variance Application and associated documents
- Story Chapel, 580 Mt. Auburn Street, Cambridge, V19-002
 - Variance Application and associated documents
- Elm Street Reconstruction, Amesbury, V19-006
 - Variance Application and associated documents
- Chestnut Farms Apartments, 100 Chestnut Farm Way, Raynham C18-019, V18-383
 - Hearing Packet AAB 1-118
- SRTA Elm Street, 134 Elm Street, New Bedford (C18-012)
 - Hearing Packet AAB 1-13
- Apartment Building, 141 Sea Street, Quincy (C17-060)
 - Hearing Packet AAB 1-69
- Minutes from the February 4, 2019 meeting.
 - 2/4/19 Draft Minutes

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